

Introduced by Senator Hernandez

February 18, 2011

An act to add Section 1367.241 to the Health and Safety Code, and to add Section 10123.191 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 866, as introduced, Hernandez. Health care coverage: prescription drugs.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Commonly referred to as utilization review, existing law governs the procedures that apply to every health care service plan and health insurer that prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based on medical necessity, requests by providers prior to, retrospectively, or concurrent with, the provision of health care services to enrollees or insureds, as specified.

Existing law also imposes various requirements and restrictions on health care service plans and health insurers, including, among other things, a prohibition on health care service plans and health insurers that provide prescription drug benefits from excluding or limiting coverage for a drug on the basis that the drug is prescribed for a use that is different from the use for which the drug has been approved for marketing by the federal Food and Drug Administration. Existing law also requires a health care service plan that provides prescription drug benefits to maintain an expeditious process by which prescribing

providers, as described, may obtain authorization for a medically necessary nonformulary prescription drug, according to certain procedures.

This bill would require the Department of Managed Health Care and the Department of Insurance to, on or before July 1, 2012, develop a prior authorization form for use by every health care service plan and health insurer that provides prescription drug benefits. The bill would require every physician, when requesting prior authorization for prescription drug benefits, to submit the prior authorization form to the health care service plan or health insurer, and would require those plans and insurers to utilize and accept those prior authorization forms for prescription drug benefits. Upon a failure to accept the prior authorization form or to respond to a physician within 48 hours, the bill would deem the prior authorization request as granted, as specified.

Because a willful violation of the bill's provisions relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1367.241 is added to the Health and
- 2 Safety Code, to read:
- 3 1367.241. (a) Notwithstanding any other provision of law, on
- 4 and after July 1, 2012, a health care service plan that provides
- 5 prescription drug benefits shall accept only the prior authorization
- 6 form developed pursuant to subdivision (c) when requiring prior
- 7 authorization for prescription drug benefits.
- 8 (b) If a health care service plan fails to utilize or accept the prior
- 9 authorization form or fails to respond within 48 hours to a prior
- 10 authorization request from a physician pursuant to the submission
- 11 of a prior authorization form, the prior authorization request shall
- 12 be deemed to have been granted.

1 (c) On or before July 1, 2012, the department and the
2 Department of Insurance shall jointly develop a uniform prior
3 authorization form that, notwithstanding any other provision of
4 law, every physician shall use to request prior authorization for
5 coverage of prescription drug benefits and that every health care
6 service plan shall accept as sufficient to request prior authorization
7 for prescription drug benefits.

8 (d) The prior authorization form developed pursuant to
9 subdivision (c) shall meet the following criteria:

10 (1) The form shall not exceed two pages.

11 (2) The form shall be electronically available and electronically
12 transmissible.

13 (3) The department and the Department of Insurance shall
14 develop the form with input from interested parties from at least
15 one public meeting.

16 SEC. 2. Section 10123.191 is added to the Insurance Code, to
17 read:

18 10123.191. (a) Notwithstanding any other provision of law,
19 on and after July 1, 2012, a health insurer that provides prescription
20 drug benefits shall utilize and accept only the prior authorization
21 form developed pursuant to subdivision (c) when requiring prior
22 authorization for prescription drug benefits.

23 (b) If a health insurer fails to utilize or accept the prior
24 authorization form or fails to respond within 48 hours to a prior
25 authorization request from a physician pursuant to the submission
26 of a prior authorization form, the prior authorization request shall
27 be deemed to have been granted.

28 (c) On or before July 1, 2012, the department and the
29 Department of Managed Health Care shall jointly develop a
30 uniform prior authorization form that, notwithstanding any other
31 provision of law, every physician shall use to request prior
32 authorization for coverage of prescription drug benefits and that
33 every health insurer shall accept as sufficient to request prior
34 authorization for prescription drug benefits.

35 (d) The prior authorization form developed pursuant to
36 subdivision (c) shall meet the following criteria:

37 (1) The form shall not exceed two pages.

38 (2) The form shall be electronically available and electronically
39 transmissible.

1 (3) The department and the Department of Managed Health
2 Care shall develop the form with input from interested parties from
3 at least one public meeting.

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.